

REMARKS

Claims 1-33 remain in this application. Claim 33 has been added. Claims 1, 6-7 and 17 have been amended.

The application was objected to as claiming priority to provisional applications Serial Nos. 60/213,396 and 60/213,827. These objections are respectfully traversed. Both of these provisional applications expired on Saturday, June 23, 2001. The present application was filed on the first following business day, Monday, June 25, 2001. These claims of priority are therefore permissible under 35 U.S.C. § 119(e)(3). These objections should therefore be withdrawn.

Claims 6 and 7 were objected to as being of improper dependent form. Claims 6 and 7 have been amended to correct the defects in form. These objections are therefore moot, and should be withdrawn.

Claims 1-32 were rejected under 35 U.S.C. § 103(a) as obvious over Hamzy and Net-mercial.com. These rejections are respectfully traversed.

Hamzy discloses providing interstitial window advertising, meaning the ad is presented before the requested content is provided. To access the requested content, the user must either interact with the interstitial ad in some fashion, or wait for a timer to expire. Col. 6, line 1 to col. 7, line 26. Hamzy therefore fails to disclose or suggest "delivering said at least one audio advertisement to said at least one user via said network in a format that precludes said at least one user from bypassing playback of any portion of said audio advertisement," as defined by claims 1 and 17. "Playback" is not disclosed or suggested by display of a static window advertisement as in Hamzy. A static ad is not "played back"; it is simply displayed. Hamzy is not concerned with audio ads, and the concept of preventing any portion of an audio ad from being played is foreign to it.

Hamzy is concerned with a different problem of ensuring that the user's attention is directed to an interstitial ad for at least some period of time. Col. 1, line 64 – col. 2,

line 8. Indeed, if Hamzy were modified so as to prevent any portion of the window ad display from being bypassed, then the function of "proceeding to the web page of interest" (see col. 1, lines 10-29) would be frustrated. The display of the advertisement could never be interrupted, and such an ad would have no useful application. This example illustrates that Hamzy is concerned with a different problem, and its feature of requiring interaction or timing of a display ad does not translate or suggest an audio ad formatted so that playback cannot be bypassed in the claimed fashion. Therefore, Hamzy fails to disclose or suggest the above-recited feature.

Net-mercial.com does not make up for these deficiencies of Hamzy, and teaches away from the providing an audio ad in a format that precludes the user from bypassing any portion of the audio ad. Net-mercial specifically teaches "giving the consumer complete control of the ad," and "[t]he user can choose, through a series of button bars on the frame to play, pause, request more information, print or exit the ad." Page 1, 3rd paragraph; page 2, 1st paragraph. Thus, Net-mercial specifically teaches against the bypass prevention feature defined by claims 1-33, and cannot be said to suggest this feature.

The combination of Hamzy and Net-mercial, failing to disclose or suggest every element of independent claims 1 and 17, therefore do not make out a *prima facie* case of obviousness against these claims. Claims 2-16 and 18-32 are also allowable, at least as depending from allowable base claims. These rejections should therefore be withdrawn.

Applicants further submit that Hamzy and Net-mercial.com also fail to disclose the specific limitations of new claim 33.

In view of the foregoing, the Applicants respectfully submit that Claims 1-33 are in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested, and a timely Notice of Allowability is solicited.

To the extent it would be helpful to placing this application in condition for allowance, the Applicants encourage the Examiner to contact the undersigned counsel


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and conduct a telephonic interview.

Commissioner is authorized to charge the amount of \$25.00 for the later presentation of one additional claim in excess of twenty, pursuant to 37 C.F.R. § 1.16(c), to Deposit Account No. 50-3683. The Commissioner is authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to the Deposit Account.

Respectfully submitted,

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